

# Spirit of the Sage Council

30 North Raymond Avenue, Suite 302  
Pasadena, California 91103

## Big Tujunga Wash – Proposed Los Angeles Golf Club

City of Los Angeles  
Planning Commission, Rm. 1600  
221 North Figueroa Street  
Los Angeles, CA. 90012  
(213) 680-7895 and via facsimile (213) 485-8005

ATTN: Hadar Plafkin, Supervising City Planner  
Irene Paul, City Planning Associate  
Darryl Fisher, Associate Zoning Administrator

RE: Proposed Los Angeles Golf Club  
(aka “Red Tail Golf & Equestrian”), Big Tujunga Wash,  
Sunland/Tujunga – Los Angeles, California.

Plan Case No. 96-0243-CU, EIR No. 95-0286-(CUC)(CUB)(VAC),  
State Clearing House No. 95051004.

City of Los Angeles Planning Commissioners, Mayor and Council Members,

### Introduction

Spirit of the Sage Council (SSC) is an all volunteer non-profit coalition of conservation organizations and Native Americans that are dedicated to the protection and preservation of America’s Natural and Cultural Heritage. Co-founded by Chief Ya’Anna, Vera Rocha of the Shoshone-Gabrielino Nation (California Tribe) and Leeona Klippstein in 1991, Spirit of the Sage Council represents the cumulative biocentric interests of approximately 50,000 individual members and coalition organization members throughout California, the United States, British Columbia and Mexico.

SSC was created to initially protect and preserve the endangered coastal sage scrub associated plant and wildlife communities of Southern California. Additionally, it is because of the cultural/spiritual significance of the natural sage scrub communities that the Shoshone-Gabrielino people and other Native American tribes have taken an active role in conservation. The most threatened of the Coastal Sage Scrub (CSS) subassociations is Riversidean Alluvial Fan Sage Scrub (RAFSS) with less than 6,000 acres remaining worldwide. This unique natural community is more endangered than tropical rain forests and the ancient forests of the Pacific Northwest. The diversity of plants and animals is also unique when considering the influences of three ecoregions (coastal scrub, forest, desert) and vegetation types coming together to share their richness on alluvial fans and washes of the Transverse/San Gabriel Mountain ranges.

### Background & General Comments

In 1991, Spirit of the Sage Council made it our goal to protect all of the remaining

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SACRED BIODIVERSITY

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endangered alluvial washes and fans of the coastal San Gabriel Mountains and Transverse Ranges. Again this was not only because of the needs of wildlife, but also because many of these remaining areas are pre-historic village sites, ceremonial grounds and burials of the Shoshone-Gabrielino Nation. A majority of the plants natural community have medicinal and spiritual significance. In particular the white sage (*salvia apiana*) is extremely important to indigenous people. This plant is used for medicine and in ceremonies that support the spiritual daily life. All of the plants and animals, including soils and hydrology are interconnected to the health of the Big Tujunga Wash ecosystem and the Shoshone-Gabrielino people.

SSC spearheaded a successful five year campaign to protect and preserve 763 acres of the North Etiwanda/Day Creek – Riversidean Alluvial Fan that has been acquired and is now a Preserve. The City of Los Angeles and County have the ability to do the same for the Big Tujunga Wash, however there needs to be a willing government leader. Spirit of the Sage Council encourages each and everyone of the City Planning Commissioners to take the steps that are needed to become true leaders in protecting one of the Earth's most endangered natural communities. If we can't protect what is endangered here in our own backyards how will we ever protect endangered tropical rain forests?

Are we a Nation and government that points to other countries and shames them for the "ethnic cleansing" and genocide of indigenous people and cultures, while we live in denial of the ongoing genocide of America's indigenous people and cultures? Shame on us? SSC encourages the Planning Commissioners and City Council Members to protect the Cultural and Natural Heritage of California. It's not a Japanese golf course development company or any other inherited developer consortium that is destroying the land, it is the apathetic decision making by our government representatives who no longer represent "the people", but corporate "persons" and faceless entities.

## Position

Spirit of the Sage Council (SSC) is opposed to the Foothills Golf Development Group's/Kajima application and proposed project in the confluence of Big Tujunga Wash. The City and Planning Commission should adopt the "No Project Alternative" and seek acquisition of the project site for a Preserve or State Park. SSC believes that this is an economically feasible alternative when considering the foreseeable impacts of flooding events and earthquakes.

The proposed project and limited range of alternatives are a noxious use of land and the environment. SSC requests that the Planning Commission and City Council develop a "Resource Management Plan and Acquisition Study", including a consideration of condemnation to protect the;

- 1) Health, Safety and General Welfare of the public,

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- 2) Resource Conservation/Natural Open Space, Rezone/down-zone a known hazardous area from A2-1 in order to protect the “Water Rights” (Treaty of Guadalupe Hidalgo) of the City of Los Angeles and an Ecological Important Area, to be consistent with the General Plan.
- 3) Prehistoric Cultural Heritage Site,
- 4) Natural Heritage Site
- 5) Endangered Species and Habitats.

## **Environmentally Superior Alternatives That Were Not Considered Or Included In The EIR**

### *1) Reacquiring Control of the Water System through enforcement of Treaty*

The City of Los Angeles owns the “Water Rights” of the Big Tujunga Wash watershed under the “Treaty of Guadalupe Hidalgo” as the original pueblo as must reclaim these rights again.

According to California natural historian, Carey McWilliams, in his 1946 book “Southern California Country” regarding City of Los Angeles water rights; “[f]rom its founding in 1781 until 1886, the City (Los Angeles) owned and operated its own water system. In the latter year, the City leased its water rights to the Los Angeles Water Company, a private corporation, for a period of thirty years. Reacquiring control of the water system in 1899, the City has since operated its own municipal system.”

“During this hiatus from 1868 to 1899, I. N. Van Nuys and J.B. Lankershim, and others, had acquired vast holdings in the San Fernando Valley which were nearer to the sources of the Los Angeles River, both surface and underground, as owners of upstream lands along the river. The only thing that saved the city from this claim was the happy circumstance, which the city had been trying to forget for decades, that it had been the one pueblo founded by the Spanish in California. Under Mexican and Spanish law, pueblos were given a prior right to all waters within the watershed for domestic uses, and to supply manufacturing establishments and to irrigate lands within the pueblo limits. In a famous lawsuit between the City of Los Angeles and the land barons of San Fernando Valley, the Supreme Court ruled that Los Angeles had succeeded, by virtue of the Treaty of Guadalupe Hidalgo, to all rights which it had enjoyed as a pueblo; therefore, its claim to the waters within the watershed was prior to that of all appropriators subsequent to 1781. In the same decision, it was also held that the city might put its water supply to uses not known under Mexican law, such as sewers, artificial lakes, and ornamental fountains. This decision saved the City of Los Angeles from disaster. Never did an American city owe more to the fortuitous circumstance of Spanish settlement.”

Because of short-term memories by local government representatives or lack of

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historical knowledge of their political bands and boundaries, it is a possibility that “water rights” or “lands” that were leased to companies, may have been confiscated. Owning *shares* in a water company that has a lease is very different than owning the title, deed or water rights.

Spirit of the Sage Council requests that the City of Los Angeles, not the project proponent, thoroughly investigate this matter and require that the results of the investigation be included in a “Subsequent EIR”. The water wells within and adjacent to the project will be impacted by the project. The change in hydrology, surface and underground water supplies and recharge abilities will be severely altered by this project and without adequate mitigation.

The EIR and Appendices have failed to identify and disclose the full range of effects to natural water resources upstream, on-site, downstream and adjacent to the proposed projects. The City of Los Angeles, Water Department and Planning Commissioners should require all scientific studies to be performed “independently” and peer reviewed to ensure that “public” water resources are fully protected from toxic contamination. SSC finds the EIR inadequate and in violation of the Clean Water Act. The proposed project is a noxious use of land and water resources, inevitably causing a negative effect on the Health, Safety and General Welfare on the public through chemical contamination of soils and water.

The project EIR and Appendices fails to disclose this important information regarding the Water Rights of the City and the effects of the project on such rights.

2) *Pro-Active Land Acquisition through Coordinated FEMA Funding and/or Condemnation*

The project applicant/land holder, City of Los Angeles, State Resources Agency/CDFG and Wildlife Conservation Board, U.S. Department of the Interior/FWS and U.S. Army Corps of Engineers should request the assistance of the Federal Emergency Management Agency (FEMA) to fund the acquisition of the Big Tujunga Wash. The historic flooding events and previous disasters are well documented. Coupled with the earthquake faults and related hazards to human life it would make sense to contact FEMA to begin acquisition negotiations.

*“There is great temporal disparity between the pace at which the mountains behave and the way people think. Exceptional flows have occurred at least once a decade, and lesser ones in greater numbers. Exceptional flows are frequent, in other words, but not frequent enough to deter people from building pantiled mansions in the war zone, dingbats in the line of fire.”*

John McPhee, *The Control of Nature*, 1989

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## Flooding/Health, Safety and General Welfare

*“Southern California is the land of the freak flood. In this semi-arid region, it can rain like nowhere else in the America. In fact, it neither rains nor pours; the skies simply open up and dump oceans of water on the land. Pouring down the steep mountain ranges with the speed and fury of a mill race, rain waters convert the dry creek beds or arroyos into raging infernos.” –*

Carey McWilliams in his 1946 book,  
*Southern California Country*

- 1916 - more than 16 inches of rain fell in two days. The San Diego Reservoir overflowed and railroad bridges were washed away.
- 1926 - a rain gauge in the San Gabriels collected more than one inch a minute on April 5th.
- 1928 - the St. Francis Dam, aka Mullholland Dam broke. 1,240 homes were destroyed and 385 human lives lost.
- 1934 - a Noah type flooding occurred at the end of 1933 and beginning of 1934, mobilizing on January 1, a number of almost simultaneous debris flows that came out of the mountains.
- 1938 - 36 inches of rain fell in 6 days. Debris basins did not pass the test, but instead filled up and over flowed. During a five day period in March eleven inches of rain fell, flooding over 30,000 sq. miles and taking 81 human lives. The skies opened up and dumped approximately 4,761,548,800,000 pounds of rain. Perch from the ocean could be fished from the streets of Los Angeles and hail the size of hen eggs struck the ground.
- 1943 - 26 inches fell in 24 hours.
- 1969 - more than 44 inches in nine days fell in the San Gabriels. 12 inches fell in one night.
- 1978 - 1ft inches of rain fell every 25 mins. In December and January there was an unusual amount of rain, but no flood. By the end of the first week in February, there had been 18 inches in all. Then, in the next 3 days, came enough additional rain to make this winter the greatest rainfall of the 20th century, exceeded only by 1884 and 1890 in the record of Los Angeles County. 3 million tons of water fell in one day. The National Oceanic and Atmospheric Administration selected the word “monstrous” to be fit the culminating February storm, in which almost a foot (12 inches) of rain fell in 24 hours, and, in the greatest all out burst, an 1ft in five minutes. **This storm throughout the San Gabriels was so powerful that the Zachau Basin overtopped, and corpses buried in the Verdugo Hills went a float.**

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**At Big Tujunga Wash**, over 600,000 tons of discrete slug (a river rapid of liquid concrete) filled up behind the dam. The County spent more than \$2,000,000.00 in removing the dislodged mud, sand and rock. **13 people died in Hidden Valley, roughly a third of the year round community at that time.** According to Amos Lewis who witnessed Nature’s fury at the wash, **the snout of the debris flow was twenty feet high**, tapering behind. Debris flows sometimes ooze along, and sometimes move as fast as the fastest river rapids. **The huge dark snout was moving nearly five hundred thousand feet a minute and the rest of the flow behind was coming twice as fast, making rolling waves as it piled forward against itself – this great slug, as geologists would describe it, this “discrete slug, this violence of wet cement”.** All this was spread wide a couple hundred feet.

1980 - There were 6 storms in 9 days.

According to natural historian, John McPhee, his published works and research, The Control of Nature, all along the San Gabriels boulders have been flung from flood storm rapids. There are areas along the foothills of the San Gabriels rocks the size of soccer balls have been thrown as far as eight miles south of the mountain front.

“Dr. Barclay Kamb- the tectonophysicist, X-ray crystallographer, and glaciologist who discovered, among other things, the structures of high pressure forms of ice: ice II through ice IX, from the Caltech geology department and described by his colleagues as “the smartest man in the world” has explained that in the San Gabriel’s canyons “above the debris basins, there are crib structures. The theory is to prevent sediment from coming out of the mouths of canyons. I think most geologists would say that is ridiculous, because they are not changing the source of the sediment. They are just storing sediment. Those crib works are less strong than Nature’s own constructs. The idea that you can prevent the sediment from coming out is meddling with the works of Nature. Sooner or later, a flood will wipe out those small dams and scatter the debris. Everything you store might come out in one event. We’re talking human time – not geological time.”

Another expert was interviewed by John McPhee, Dr. Andrew Ingersoll, the planetary scientist has also made similar comments regarding the Big Santa Anita Canyon and storm events, “The canyon is full of crib structures, arresting debris, an example of bureaucracy doing something for its own sake.” In 1969 the storm caused the debris to brake free. “Those little dams must have been nearly insignificant. They were based on the experience of Swiss farmers, and this may have been a totally different situation. It might have been a very poor concept to try to control the San Gabriels.”

The Project EIR and Appendices fail to provide this significant information. The EIR and Appendices fail to identify when the last 100 year flood event last occurred or when it is expected to occur again. The EIR includes only 20 year flood event map delineations that mislead the City and public by taking into account minimal flooding events and not the full range of impacts. The EIR and Appendices fail to include a FEMA 100 year flood event delineation and mitigation measures to the maximum extent.

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The City Planning Commissioners, permitting agencies and project applicant should take special consideration of the lack of information and deficiencies in the EIR/Appendices regarding the effects of flooding in the Big Tujunga Wash. One such example is a EIR statement made in the Appendices for Cultural Resources on page 16, paragraph four, last sentence, “ The improvements to Lot 88 are listed as “Gone” in 1935, indicating that the structure had either been removed or fallen into such disrepair that it no longer held value.” The information that has not been included is that there was “a Noah type flooding occurred at the end of 1933 and beginning of 1934, mobilizing on January 1, a number of almost simultaneous debris flows that came out of the mountains.

The EIR/Appendices reaches unfounded “best guess” conclusions on why one Lot (86) is assessed for more taxes than another Lot (88) based on size, but not location. SSC finds the EIR/Appendices deficient and misleading to the facts. SSC finds that based on our investigation of flooding events and times periods, that the reason that Lot 88 property was taxed only \$30.00 compared to Lot 86 of \$920.00 is because of the location of Lot 88 within the Wash/Floodplain. “The disparity between these two amounts indicates” that there should not be any type of development permitted within the Wash and Floodplain.

The EIR and Appendices has failed to correctly identify the true dimensions of the flood plain and waters of the U.S..The rainfall averages in the EIR are arbitrary and do not base the figures on high rainfall occurrences. A 100 year flood event, 50 year event, 20 year event, 10 year and five year event fails to be clearly identified in the EIR with photographs. The EIR fails to identify the dates of these past events and projected dates in the future. A development project of such great magnitude and mitigation measures need to be based on the “high mark” of known flooding occurrences and rainfall. The EIR is misleading to the public and permitting agencies.

The EIR has failed to include a discussion or disclose the range of impacts to the habitat and effects to the species beyond the mapped 20 year event due to the proposed project/s. The City and permitting agencies should require the project applicant to provide all the essential information on which to base their final decision. The lead local agency and permitting agencies could be held accountable and liable for such inadequacies in the final documents. The permitting agencies are required to base their decisions on the “worst case scenario” of “high mark” flooding events that are known to occur.

Without such data is difficult for the City and public to understand how the project proponent and consultants are basing their conclusions or whether such conclusions are scientifically and biologically sound. The EIR needs to include all information on which to base a sound conclusions, or such conclusions may be considered arbitrary.

Because the project applicant has not assessed the “worst case scenario” or mitigated to the maximum extent, the EIR/Appendices are deficient and inadequate. The EIR has not adequately identified or mitigated the project effects on aquatic habitat species including fish and amphibians. The Arroyo chub, Santa Ana sucker and Arroyo toad may not presently occur on site but upstream. During periods of high rainfall and flooding events

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these species may occur on site. Additionally, these species must not be precluded from recovery, including the Slender horned spineflower. It is a scientific fact and quite obvious that spineflower population is effected by rainfall and drought periods. Survey data on the spineflower population/occurrences in relation to the flooding event data make the significance of natural hydrological cycles apparent. During drought periods the occurrences were less. Following flooding regimes the occurrences were greater in numbers and distribution throughout the Big Tujunga Wash and project site. Because the plant population and occurrences are interconnected with the historic dynamic flooding changes and events throughout the whole Wash, the proposed project and EIR is deficient and fails to provide the ability of the species to recover its full distribution on the project site. The Slender-horned spineflower should not be confined to the area where the occurrences are now established but should be able to recover. The proposed golf course and proposed alternatives preclude the recovery of the endangered spineflower, arroyo toad, chub and Santa Ana sucker.

3) *Acquisition to Protect and Preserve the Historic, Cultural/Spiritual, Biological, Visual and Educational Resources.*

The Big Tujunga Wash has all of these valuable and rare resources that are irreplaceable. The site/habitat supports species that are rare, candidates, proposed and listed, including migratory birds. The very name “Tujunga” is of the Shoshone-Gabrielino language and a pre-historic village site. The cultural significance of the Big Tujunga Wash has not been identified or mitigated for in the proposed project EIR. The draft EIR does not even mention the indigenous people of the land or the historic and current significance of the site to the Shoshone Nation. The Big Tujunga Wash contains numerous recorded and unrecorded pre-historic and historic sites. Here again are two other reasons why the Big Tujunga Wash needs to be acquired and protected.

The State of California, Resources Agency, Wildlife Conservation Board and Department of Fish & Game have identified Riversidean Alluvial Fan Sage Scrub as a high priority habitat for acquisition. The U.S. Department of the Interior (DOI), Fish & Wildlife Service (FWS) also recognizes the need to conserve this ecosystem and is required to do so, pursuant Section 2 of the Endangered Species Act (ESA). The FWS also has the “duty to conserve”, pursuant to ESA section 7(a)(1). The courts have held that the *duty to conserve* requires federal agencies to affirmatively and “actively pursue a species conservation policy” and to dedicate “all means at their disposal” in doing so. (Carson-Truckee Water Conservancy Dist.v. Clark, 741 F.2nd 257, 262 (9th Cir. 1984); Nat’l Wildlife Federation v. Nat’l Park Service, 669 F. Supp. at 388; see also Defenders of Wildlife v. Andrus,428 F. Supp. 167, 170 (D.D.C. 1977).).

Most federal agency actions or failures to act that result in some harm to, or even prevent the recovery of, listed species are arguably violations of the “duty to conserve”.The DOI has released to the State, through Section 6 funding of programs, an initial 6 million dollars for acquisition of Coastal Sage Scrub Communities. Since



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Riversidean Alluvial Fan Sage Scrub is the most “threatened”, we could assume that there is a probable chance of funding.

Additional funding may also be available through Congressional appropriations and DOI National Park Service for acquisition of Pre-historic and Cultural Sites of Native Americans. This appropriation would be sought through the Advisory Council on Historic Preservation. The City of Los Angeles and land holder/project applicant should implement measures to Register the Big Tujunga Wash as a “State Historic Landmark”. This not should not be a problem since the State Historic Preservation Office has already recorded the Pre-historic and Historic sites within and adjacent to the project site. Once the State has Registered the Site as a Landmark, the Advisory Council on Historic Preservation (National Park Service) with the request of the Secretary of the Interior can designate the site as a “National Historic Landmark”. There are certain application forms and procedures to do this.

The site could also be designated as a “Native American Cultural Park”, through the National Historic Preservation Act. This has been done by the City of Malibu and Topanga. Combining the Cultural, Biological, Education and Visual significance of preservation is important when considering the funding mechanisms for acquisition or condemnation if the land holder/project proponent is an unwilling seller. It would be beyond foolishness and ignorance if this special land and important resources were “compromised” by a common golf course/shooting range project. It would be a crime of white collar greed.

### *Designation of a Prehistoric, Cultural and Sacred Site*

The EIR and Appendices are deficient and fail to identify the recorded Pre-Historic sites within and adjacent to the project site as being part of the larger Shoshone-Gabrielino Tujunga Village Site. The project proponent and consultants attempt to disregard the significance of “cultural resources” on site and categorizing them as sperate or different from the Big Tujunga Village. Furthermore, the EIR/Appendices fail to disclose all of the information and material that was gathered by the “Literature Review”.

SSC and the Shoshone Gabrielino Nation contends that CA-LAN-657 is part of CA-LAN- 167 (Tujunga Village Site) as is CA-LAN-158, these sites are all one and the same “Tujunga Village”. It was most common for the Shoshone Gabrielino Villages to use the “knolls” adjacent to Washes. These are special gathering areas for ceremonies. The Day Canyon/North Etiwanda Wash in San Bernardino County has a similar feature and has been acquired for preservation. The richness of the site even in 1992 of bearing 19 artifacts is evidence to the cultural significance of this site and area. Even after a 100 years of other archaeologists and pot-diggers removing artifacts, including natural flooding disturbances, CA-LAN-657 was still able to be identified.

The EIR/Appendices state that there are,” Seven *sperate* cultural resources management reports that encompass *portions* of the project area.” What the City Planning Commissioners and Council Members need to recognize is that six of the reports are

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from “reconnaissance projects” and that only one “field study” has ever been performed and only for “portions” of the project site. The project site has never been studied in whole or in context as being a part of the Shoshone-Gabrielino “Tujunga Village”. (See page 22 of the Cultural Resources Appendix). Padon was unable to locate the CA-LAN-657 and did not examine or conduct field surveys throughout the entire project site, but based her conclusions on previous deficient reports and comments.

As stated previously, the Tujunga Village Site is not limited to one particular recorded site (CA-LAN-167) anymore than the City Hall building site represents the whole City of Los Angeles. Determining the boundaries of the pre-historic Tujunga Village has been mapped by Spanish Explorer’s, Missionaries and Ethnographers, however only the Shoshone Gabrielino people and MLD, Chief Ya’Anna Vera Rocha knows the full extent of the old village and areas of significance that need to be preserved. The “stone ring” and “circular depressions” associated with the CA-LAN-657 site could be several different things according to Vera Rocha, but the EIR/Appendices are not detailed enough to clarify whether the “stone ring” is a movable or unmovable artifact. There are stone ring movables, approximately palm size that are considered sacred. Other unmovable type of “stone rings” are also significant and could be a “medicine wheel”, yucca roasting pit or even a burial.

The Big Tujunga Wash, terraces, knoll and canyons are all interrelated features of the larger Shoshone Gabrielino Village. Because the whole Big Tujunga Wash and proposed project/s site are of cultural/spiritual significance to the Shoshone Gabrielino people and expected to be impacted by proposed development projects, SSC and the Vera Rocha, hereditary Chief of the Shoshone-Gabrielino Nation (California Tribe) requests that the project site be acquired and preserved. The EIR/Appendices fail to disclose significant cultural information. Because of the historical flooding events throughout the Wash and project site, Chief Ya’Anna -Vera Rocha, expects that artifacts and cultural resources are scattered throughout the project site. Chief Ya’Anna, the Shoshone-Gabrielino people and SSC requests that the City of Los Angeles and permitting agencies take the needed pro-active administrative steps to ensure that the remaining artifacts and recorded sites will be preserved and not be disturbed by the proposed project. Some federal Acts and Executive Orders that apply to protection and preservation of the Big Tujunga Wash and CA-LAN-657, CA-LAN-2320, CA-LAN-2323, CA-LAN-2313H are;

- 1) TITLE 16, SUBCHAPTER II – NATIONAL HISTORIC PRESERVATION, § 470. et seq. and § 470-1 (1-6), special notice and emphasis to (4) “*contribute to the preservation of nonfederal owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;*”.
- 2) Ex. ORD. NO. 11593. PROTECTION AND ENHANCEMENT OF THE CULTURAL ENVIRONMENT (Richard Nixon, May 13, 1971, 36 F.R. 8921).
- 3) TITLE 16 § 470a.(2)(A-F) and allocation of funds for preservation and acquisition

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through § 470a (d)(1-3) “(i) for the preservation of National Historic Landmarks which are threatened with demolition or impairment and *for the preservation of historic properties of World Heritage significance,*” (emphasis added).

- 4) TITLE 16 § 470h-4. et seq.
- 5) TITLE 16 § 470a-1. WORLD HERITAGE CONVENTION.

The U.S. Secretary of the Interior may coordinate protection efforts between federal and state historic preservation agencies, Indian tribes, organizations and non-Federal land holders. “No non-Federal property may be nominated by the Secretary of the Interior to the World Heritage Committee for inclusion on the World Heritage List unless the owner of the property concurs in writing to such nomination.”

Funding for acquisition and preservation is apparently made available through § 470h. Historic Preservation Fund; establishment; appropriations; source of revenue. The Outer Continental Shelf Lands Act (67 Stat. 462, 469), as amended (43 U.S.C. 338), and/or under section 7433(b) of title 10 as appropriated through Congress.

The Outer Continental Shelf Lands Act provides funding to the Historic Preservation Fund in the Treasury of the United States of “ \$150,000,000 for each of fiscal years 1982 through 1997.” “Any moneys not appropriated shall remain available in the fund until appropriated for said purposes; *Provided*, That appropriations made pursuant to this paragraph may be made without fiscal year limitation”. (As amended Pub. L. 102-575, title XL, § 4011, Oct. 30, 1992, 106 Stat. 4760.)

Spirit of the Sage Council, “a preservation organization”, and Co-founder Vera Rocha, a federally recognized “California Indian” requests and appeals to the City of Los Angeles, Planning Commissioners, Council Members and Secretary of the Interior the following;

- 1) Determine who holds deed and title to the **entire Big Tujunga Wash site, including CA- LAN-657, CA-LAN-2320, CA-LAN-2323, CA-LAN-2313H,** “property” and “encourage” the preservation of the site openly in writing.
- 2) That the appropriate City of Los Angeles Representatives contact and encourage Secretary Babbitt or DOI representative, to meet with appropriate individuals or agency and request that the “owner of the property” comply in writing for said proposed nomination to the World Heritage Committee, National Historic Preservation Committee and State Historic Preservation Committee, including appropriate Officers.
- 3) That the City of Los Angeles assist and encourage the Secretary of the Interior to formally request funding and appropriations from the Historic Preservation Fund and Congress, to undertake a project to preserve Gabrielino-Shoshone Site, CA-LAN-657, CA-LAN-2320, CA-LAN-2323, CA-LAN-2313H, County of Los Angeles, that is threatened with destruction by the proposed project/s.

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- 4) That the City of Los Angeles and Secretary of the Interior place an “injunction” on the proposed project until the Prehistoric sites and total cumulative evidence that has been removed and/or existing is studied by an independent scientific review committee of experts in the scientific field of archeology and ethnobotany. Additionally, oral history of appropriate Most Likely Descendants (MLDs) will be included in the final determination of significance.
- 5) That the Secretary evoke TITLE 25 § 3006. and 3006.(c)(a)(1-9). as needed to assign the “Review Committee” to facilitate the resolution of any disputes that may occur between recognized California Indians in regards to preservation of the Gabrielino-Shoshone Site/s CA-LAN-657, CA-LAN-2320, CA-LAN-2323, CA-LAN-2313H, County of Los Angeles, CA. and any other future cultural and historic preservation measures.
- 6) That the City of Los Angeles and Secretary or Representatives meet with Vera Rocha and Spirit of the Sage Council to personally discuss protection of this Sacred and Cultural Site.

*“As native seed banks, native plants and native animals become endangered, the native languages, native people and native cultures also become endangered”.*

Chief Ya’Anna, Vera Rocha, Gabrielino-Shoshone Nation

The project EIR and Alternatives fail to include a full range of Environmentally Preferred Alternatives, including those that have been recommended by SSC and the Shoshone Gabrielino Nation. The EIR is insufficient and attempts to play a “Straw Game” of Alternatives that are all consisting of development and destruction of rare natural and cultural resources. The EIR is not in compliance with CEQA, State Historic Preservation Act and National Historic Preservation Act and fails to further the affirmative preservation of Historic and Cultural Resources.

Pursuant CEQA, NEPA, NHPA and other applicable regulations, the project applicant must survey and conduct field studies for the entire project site in consultation with and take oral history from the Native American, Most Likely Descendant (MLD), which is Chief Vera Rocha of the Shoshone-Gabrielino Nation, consult with the Natural History Museum and the Native American Heritage Commission. Furthermore, the State Historic Preservation Officer should be consulted along with the Advisory Council on Historic Preservation for the Western Region.

*The Cultural/Spiritual and Historic Significance of the Project Site that has failed to be identified in the EIR is as follows;*

The Big Tujunga Wash and Sunland -Tujunga area has been inhabited by the Shoshone-Gabrielino people who have pre-historic village sites, hunting, gathering

# Spirit of the Sage Council

30 North Raymond Avenue, Suite 302  
Pasadena, California 91103

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and ceremonial grounds throughout the area including burials. The EIR and appendices are inaccurate and fail to disclose that the Pre-historic village of Tujunga includes the project site and extends into the canyon and Angeles Nation Forest. The EIR and appendices mislead the City, permitting agencies and public into believing that the Tujunga Village Site is approximately one mile away. This is like saying that the City of Los Angeles occurs only at the City Hall site.

Throughout the past hundred years and longer since the Shoshone-Gabrielino were physically removed from their Villages, Ancestral Land and Territory, numerous archaeologists and pot diggers have removed artifacts and human remains from the Big Tujunga Wash and project site. Some of the artifacts that have been removed were cataloged while many others have not. The dynamic flooding events that occur within the Wash and project site have also displaced artifacts and/or buried them.

Never the less, the Big Tujunga Wash and project site is within the pre-historic village of Tujunga. The evidence of pottery shards, hunting projectiles and other objects that have been found and removed from the site all indicate that the Shoshone-Gabrielino have historically used this site, *and to the present day continue to use this site for cultural and spiritual purposes*. The EIR and Appendices mislead the City, permit agencies and public into believing that the Shoshone-Gabrielino Nation and people no longer exist or use the project site. The failure of the project applicant and consultants to take the “oral history” of the Most Likely Descendant (MLD), Chief Ya’Anna, Vera Rocha is of significance. The City Planning Commissioners, Council Members and permitting agencies should require that the project applicant consult with the hereditary Chief Ya’Anna and avoid all impacts to Cultural Resources, including the Sacred Sites and any burial remains.

The project proponent is required to perform cultural studies and surveys consistent with and pursuant to CEQA, NEPA and NHPA. Spirit of the Sage Council requests that the agencies and project proponent conduct the required surveys and studies, including meeting with Chief Vera Rocha and her legal counsel. Vera Rocha is a co-founder of Spirit of the Sage Council and may be contacted through our coalition. The plan fails to identify biological resources of cultural significance and religious value to California Indian tribes, Nations and their members. The plan fails to appropriately identify and mitigate cultural impacts. The plan fails to avoid impacts to cultural resources or provide appropriate alternatives. The project proponent and consultants have failed to contact or consult with the appropriate California Indians who have been recognized by the State of California as the Most Likely Descendant (MLD). Furthermore, significant objects have been removed and others destroyed without consultation by effected California Indians. The EIR fails to identify or disclose all of the cataloged artifacts, objects and human remains that have been removed from the project site cumulatively.

The project proponent misidentifies the significance of this site and proposes to disregard the sites future treatment. Earth moving activities have not been monitored by California Indians, nor have the Most Likely Descendants been notified or consulted. The project site and surrounding area where CA-LAN-657, CA-LAN-2320, CA-LAN-2323, CA-LAN-2313H was found and removed should not be disturbed any further. The whole project area extending throughout the Wash and into the canyon

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is believed to be a sacred site where medicines are still gathered, prepared and utilized in religious ceremony.

The EIR and Appendices are deficient and fail to correctly identify the cultural significance of the proposed project site or to adequately mitigate for proposed impacts. The conclusion that has been reached in the EIR/Appendices that investigation of the site by an archeologist is adequate mitigation has not and cannot be justified. The conclusions reached and mitigation proposed are “arbitrary, capricious, and an abuse of discretion or otherwise (are) not in accordance with the law.” (5 U.S.C. § 706(2)(A).)

The City of Los Angeles, Planning Commission and Council Members have the responsibility and duty to thoroughly investigate the concerns that have been raised regarding “Cultural Resources”. The courts have stated that, “An administrative body to which by statute investigative and accusatory duties are delegated may take steps to inform itself as to whether there is a probable violation of the law.” (U.S. v. Morton Salt Co., Ill. 1950, 70 S.Ct. 357, 338 U.S. 632, 94 L.Ed. 401.) and (F.T.C. v. Manager, Retail Credit Co., Miami Beach Branch Office, 1975, 515 F.2nd 988, 169 U.S. App. D.C. 271.)

Because the proposed plan and project site is within the ancestral territory of the Shoshone-Gabrielino Nation and their Inland Tribe, and a major 100 year floodplain, as delineated by FEMA, the project site is under tribal, state and federal jurisdiction. Therefore the project applicant must comply with various regulations and Acts that protect Native American prehistoric sites, religious plants, ceremonial grounds, burials and cultural artifacts.

The entire project site is within the Big Tujunga Watershed and floodplain. This site and area was and still is a significant biological, cultural and religious resource to Chief Vera Rocha, their family, clan and Nation. The Shoshone-Gabrielino people have inhabited the area before the Spanish and European occupation. What today is referred to as “Property Rights” developed over a continuum of the Shoshone-Gabrielino genocide based on invasion, lies, theft, rape, murder and slavery. To this day Congress has failed to ratify approximately eighteen treaties made to California Indian Tribes. The Shoshone-Gabrielino are a sovereign Nation.

### *Shoshone-Gabrielino Cultural/Spiritual (Ethnobotanical) Significance of the Big Tujunga Wash and Project Site*

The EIR has not included a cumulative impacts analysis of Shoshone-Gabrielino cultural resources within the City of Los Angeles and Greater Los Angeles Basin. The EIR has not provided adequate mitigation for direct, indirect and cumulative impacts to “Cultural Resources”. The Shoshone Gabrielino people are faced with extinction and are an endangered people. The loss of cultural sites has a direct and indirect effect on the indigenous people through loss of identity and sense of place and belonging. Every other race and culture living in the City of Los Angeles has a “home land”, a place on the Earth that their families came from and have a history with. The pre-historic village sites, ceremonial grounds, burial grounds and Sacred Sites/Lands

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of the Shoshone Gabrielino people continue to be destroyed, picked apart, dug up, bulldozed and paved over as part of a continuing “genocide” and “ethnic cleansing” of the original inhabitants of Los Angeles. Tujunga, Cahunga, Pavungna (Long Beach), Cucamonga and the dozens of Shoshone Gabrielino villages that are part of California’s Cultural Heritage have been chipped away. Slowly destroying the little bit remaining of the geophysical culture of the indigenous people.

The loss of cultural and sacred sites has a long term effect on the spiritual/religious practice of the Shoshone Gabrielino people. The City of Los Angeles has recently approved the development/destruction of the Ballona Wetlands (Playa Vista) and Cultural/Spiritual Sacred Site of the Shoshone Gabrielino. In consideration of these impacts including the proposed development/destruction of Pavungna (Long Beach), Bolsa Chica Wetlands Mesa, Orange County, Cucamonga Canyon Wash, San Bernardino County, Lytle Creek/Cajon Wash, San Bernardino County, Hunter’s Ridge/Fontana, San Bernardino, Etiwanda Wash/San Sevaine, San Bernardino and many others, it appears that there is a final assault of “ethnic cleaning” on the Shoshone-Gabrielino Nation and People. The genocide of the Shoshone Gabrielino is matched by the ecocide of species extinction. There is no coincidence that the control of the land base and Nature has a direct effect on indigenous cultures and believes. This is historically and presently the cause of religious and political wars throughout the world. The war on the Shoshone Gabrielino is an invisible one to most people. It is an ongoing war that is thought of in the past- tense, if ever thought of at all.

Because Nature and its Beauty is the Shoshone Gabrielino’s Synagog, Church and Cathedral, the sacred works and gifts of the Creator are not worshiped or honored by local state or federal government permitting agencies, but looked upon as a “resource”, “tax revenue base”, “land asset”, “unimproved parcel”, there is a philosophical, religious, moral difference of perspectives. While bulldozing of St. Paul’s Cathedral or the Grave of the Unknown Soldier are forbidden, the project proponent proposes to the City of Los Angeles to bulldoze and destroy “just a little bit more” of the Shoshone-Gabrielino’s Church, Sacred Site and pre-historic village of Tujunga. SSC and the Shoshone Gabrielino people strongly oppose this proposal. The chipping away of the Big Tujunga Wash and Cultural Resources are a direct assault on the remaining Shoshone-Gabrielino people and their “religion”.

Snow covered mountain peaks, headwaters of canyon lands, emergence of underground springs, wetlands, where waters come together to create rivers and then end in the ocean are considered the most sacred and holiest places by the Shoshone-Gabrielino people. This is where life begins and ends. It is also the places where they could find the most nourishment. Hunting was good with an abundant supply of wildlife. The medicinal and ceremonial plants most commonly used by the Shoshone-Gabrielino are found in these areas. The most Sacred and Ceremonial Plants are White Sage, Tobacco, Mugwort, Jimson Weed (Datura) and Chia. The dolphin, whale, salmon, red-legged frog, harvest ant, spider, burrowing bee, horned lizard, woodpecker, raven, bald eagle, golden eagle, hawk, owl, rabbit, bear, bobcat, coyote and deer are all significant participants in Shoshone-Gabrielino religious ceremonies.

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Other biological resources of cultural significance (ethnobotany) include, Oak trees, California Walnut, Holly leaved cherry trees, California sage, Black sage, Yucca, Cactus, Black berries, wild yam, wild grape, Willow, garlic/onion, Manzanita, Yerba santa, Chaparral, Tule/cat-tails, Soapwort, Nettle, Elderberries, Sedge grasses and other edible plants, roots, seeds and flowers. Several historic Yucca roasting pits occur throughout the project site. All of the plants, insects, lizards, fish and mammals keep the Water healthy (well). In turn the water keeps all species well. It is with this understanding and respect that the Shoshone-Gabrielino people live by. The indigenous people lived *with* the Earth and the hydrological cycles of the Big Tujunga Wash. The *people* were and still are in harmony with Natural Forces.

The Shoshone-Gabrielino knew where it was safe to build a Wickiup, or a Mission when enslaved, and when it was safe to build. The indigenous people moved and rotated their structures and sites as not to leave a permanent impact on the Earth. That is why to this day that archaeologists and professional bone diggers often use screens to sift through soils in attempts to find any signs of Gabrielino occupation. Small family villages are more difficult to find than village trading centers (milling sites). The Gabrielino tribal people/families occupied and still live in the foothills and inland valleys of San Bernardino, San Gabriel and San Fernando. Enslaved by the Catholic Missionaries and sold to Spanish Ranchers, the Gabrielino people were set free in the mid-1950's. Until that time they were still considered the property of the Catholic Church who punished and persecuted the Gabrielino people if they spoke their indigenous language or practiced their religious ceremonies. The United States government continued this form of religious persecution until the Carter Administration in the 1980's.

The Gabrielino people, language and religious ceremonies have become endangered. Faced with near extinction by genocide, it is estimated by Chief Ya'Anna, Vera Rocha that less than 500 Gabrielino people remain. Approximately 90% of the Shoshone-Gabrielino ancestral lands and territory (habitat) has been taken, destroyed or converted by the American Industrial Society and Progress cult. In the first ten years of Missionization (Churchianity), 1769 through 1779 approximately 23,600 California Indians were killed by various diabolical means.

*“Since Southern California was the area of most intensive Mission activity among Indians, it is interesting to note the consequences of Missionization. From a total of 30,000 in 1879, the number of Indians in Southern California declined to approximately 1,250 by 1910. The seeds of this decline were sown by the Franciscans.”*

*“With the best theological intentions in the world, the Franciscan padres eliminated Indians with the effectiveness of Nazi operating concentration camps”.*



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*“During the entire period of Mission rule, from 1769 to 1834, the Franciscans baptized 53,600 adult Indians and buried 37,000.”*

Carey McWilliams in his 1946 book,  
*Southern California Country*

Recognized by the State of California, the Shoshone- “Gabrielino” have not been formally recognized by the U.S. and Congress in respect to being awarded a “reservation” or government subsidies, except for health services. The U.S. Department of the Interior has recognized individual tribal members and their descendants as Gabrielino by providing identification papers and roll numbers. The Shoshone-Gabrielino Nation is still to this day “Sovereign” in the truest definition of the word.

Pursuant to TITLE 25, SUBCHAPTER XXV- INDIANS OF CALIFORNIA §651., “Indians of California” defined, “For the purposes of this subchapter the Indians of California shall be defined to be all Indians who are residing in the State of California on June 1, 1852, and their descendants now living in said State.” (May 18, 1928, ch. 624, §1, 45 Stat. 602.)(*emphasis added*).

The DEIR fails to disclose this significant information or to identify the project site as being an area of cultural and religious significance to the Shoshone-Gabrielino Nation and People. Spirit of the Sage Council and the Council’s co-founder, Chief Vera Rocha of the Shoshone-Gabrielino Nation requests that the project applicants and proponents, including the U.S. Army Corp of Engineers and permitting agencies, address these concerns appropriately according to the recommendations that should be provided through consultation (§800.4(c).), the section 106 process and plan, pursuant to 36 CFR, National Historic Preservation Act, including sections contained in Subpart C – Special Provisions. The DEIR is not in compliance with the California Environmental Quality Act (CEQA), National Environmental Protection Act (NEPA), Clean Water Act, Indians Graves and Repatriation Act, Native American Religious Freedom Act and Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”. The intent and requirements of Executive Order 12898 are clearly illustrated in the President’s February 11, 1994 Memorandum for the Heads of all departments and Agencies.

TITLE 25, SUBCHAPTER XXV – INDIANS OF CALIFORNIA §651. “Indians of California” defined, “For the purposes of this subchapter the Indians of California shall be defined to be all Indians who were residing in the State of California on June 1, 1852, and their descendants now living in said State.” (May 18, 1928, ch.624, §1, 45 Stat.602.) (*emphasis added*). Vera Rocha was born in the State of California and continues to live in the State of California. Vera Rocha has been able to trace her maternal lineage to the San Gabriel Mission (Gabrielino) and her paternal lineage to Diegan ancestry.

TITLE 25 § 657. “Revision of roll of Indians and amendments”. The Secretary of the Interior provided Vera Rocha with a roll number identifying her and recognizing her as a “California Indian”. The U.S. Department of the Interior and U.S. Treasury has disbursed funds to Vera Rocha and her descendants.

Please be aware that no other “California Indians”, Bands or Individual members of

# Spirit of the Sage Council

30 North Raymond Avenue, Suite 302  
Pasadena, California 91103

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Bands have the authority to speak on behalf of Vera Rocha, her family or the Gabrielino's. Any transactions between "California Indian" individuals, tribal members or families were not formally approved by Vera Rocha and do not apply. Vera Rocha has never relinquished her rights as MLD or her ancestral territories. Spirit of the Sage Council and Co-founder, Vera Rocha, recommends that the Service and all Federal agencies base their actions, decisions and responses on factual information and not mere heresy.

Due to the lack of the most basic information and misidentification of the cultural prehistoric site/s in the project report. SSC and Vera Rocha of the Shoshone Gabrielino Nation finds that the EIR is deficient and in violation of applicable regulations, including CEQA, NEPA and the NHPA. It is obvious that the project proponents, City of Los Angeles, permitting agencies, including SHPO have been misinformed in regards to this prehistoric sites and cultural significance. We question the "possibility" and believe that there are burials within the project site. Any human remains that have been taken or excavated from this site in the past, including artifacts and ceremonial objects shall be returned to Vera Rocha and the Gabrielino Band, pursuant to the Graves and Repatriation Act. All such human remains and artifacts that have been recovered and/or removed shall be reburied on site and fully protected. It is most inappropriate to approve a project, plan and issue "permits" that is known to be within a prehistoric site and in which provides habitat for listed and unlisted endangered species.

The EIR, project applicant/proponent and consultants propose that a "investigation" of a pre-historic cultural site by an "archeologist", and having an archeologist on site provides for the mitigation of impacts to pre-historic and cultural resources. The proposed mitigation is insufficient and fails to include the development and implementation of a Section 106 Programmatic Agreement, pursuant to the National Historic Preservation Act. Furthermore, and once again, the project proponent has failed to contact or consult with the Native American Most Likely Descendant (MLD), Chief Ya'Anna, Vera Rocha of the Shoshone-Gabrielino Nation to begin the required Section 106 process. The EIR and project applicant has not considered the significance of "oral history".

Spirit of the Sage Council and Shoshone-Gabrielino tribal leaders requests that the applicant and agencies comply with regulations and public resource codes, including such provisions of state legislation and similar programs that have been created for other California Indians.

In reference to such programs, the State of California has created a pilot project to reach a *mutual agreement* with the Covelo Indian Community in regards to natural resources and subsistence fishing. Pursuant to the 1995 California Fish & Game Code, Division 13., State-Tribal Agreements (added by Stats 1986 ch 691), Chapter 1. Legislative Findings § 16000. " It is hoped that this pilot project, if successful, will provide the incentive for enactment of broader legislation that would authorize similar negotiated agreements with other California Indian tribes."

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The DEIR has failed to provide significant cultural resource information and refers to “future studies” as Goals. CEQA requires that all appropriate fact gathering studies and surveys be conducted prior to adoption of the EIR. This ensures that the subject matter has been adequately addressed and mitigated. 36 CFR requires that federal lead agencies, and projects with a federal nexus, prepare a section 106 program in cooperation with Indian Tribes. The State Historic Preservation Act has the same requirements, ensuring that state programs are consistent with federal regulations, providing equal or greater protection.

### *Unidentified Historic Resource on Site – “Zanja”*

The Gabrielino are known to be expert astronomers and hydrologists. Their knowledge of natural cycles was exploited during their slavery in which many Gabrielino’s and other tribes labor were used by Spanish Ranchers and Missionaries to *dig* ditches (zanja’s) that would transport water to Missions, Ranches and converted agricultural lands. According to research by Rupert Hughs published in his 1941 book, *City of Angels*, and later by Carey McWilliams in his 1946 book, *Southern California Country*,

*“Water was diverted by a system of zanjias, or open ditches, for irrigation and domestic consumption. Early residents of the city got their water, either from the zanjias, or from water peddlers who roamed the town. The first attempt to conserve and develop the available water supply occurred in 1854, when the city appointed a Zanjero, or water commissioner to guard the zanjias and to keep them repaired.”*

The project EIR refers to the presence of a old water irrigation ditch, however dismissed any significance of the site. SSC believes that the water irrigation ditch may be of historical significance if when studied it is determined to be an original “zanja”. From our experience in reviewing other projects proposed within floodplain regions, such “zanjas” have been found and are significant historical and cultural sites. The history of California’s water ways and utilization is nothing to be dismissed and is very important. SSC believes that the EIR is deficient and does not adequately identify and mitigate for all pre-historic and historic resources effected by the proposed project/s.

The proposed project/s and EIR fails to adequately identify impacts to drinking water resources and wells or to adequately mitigate such impacts. As in our fore mentioned comments in regards to Cultural Resources and Zanjias, zanjias were developed throughout the South Coast Basin floodplains approximated to rivers, the Los Angeles River, San Gabriel River, Santa Ana River, and their tributaries.

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## *Biological Resources – Endangered Species and Habitats*

*“California floristic province. This familiar Mediterranean climate domain, stretching from southern Oregon to Baja California and recognized by botanists as a separate evolutionary center, contains one fourth of all the plant species found in the United States and Canada combined. Half, or 2,140 species, are found nowhere else in the world. Their environment is being rapidly constricted by urban and agricultural development, especially along the central and southern coasts of California.”*

E.O. Wilson. The Diversity of Life.-

The diversity of species found in California may be primarily due to its Mediterranean climate influence. Most of California falls within one of eight Mediterranean regions of the Earth. According to U.S. Fish & Wildlife Service, 161 species in California are presently listed as threatened or endangered under the U.S. Endangered Species Act of 1994. California is second only to Hawaii (224 listed and 428 candidates) in the number of endangered species. This number represents approximately 15.5 percent of the species listed throughout the country. In addition, there are approximately 1,102 candidate species identified for Federal listing in California. A conservative estimate of species extirpation compared to the numbers that conservation biologists indicate. Double the amount that U.S. Fish & Wildlife reveal, over 6,000 species of plants and animals need immediate protection. The loss of biological diversity is staggering when we take into account the species that have not yet been identified or categorized. At this rate of destruction, it is highly likely that the only mammalian species to survive will be those that the human species choose.

**“The plain intent of Congress was to halt and reverse the trend toward species extinction, whatever the cost.”** Tennessee Valley Authority (TVA) v. Hill, 437 U.S. 153, 180, 184 (1973) (emphasis added).

SSC is extremely concerned about the proposed permitted “take” (killing) of endangered species through direct, indirect and cumulative loss of habitat by this project. We are most concerned about the Least Bell’s vireo, southwestern willow flycatcher and Slender-horned spineflower, all federally listed endangered species. It is to our understanding that the proposed project may be within designated “critical habitat” of the endangered Least Bell’s vireo. The Sage Council is unaware of designated “critical habitat” for the endangered Willow-flycatcher and is under the impression that “critical habitat” has been proposed through litigation. The endangered Slender horned spineflower has not yet received “critical habitat designation”, a final “recovery plan” or the implementation of a “recovery plan”. As you may be aware, the proposed project site does “contain physical and biological features essential to, and that may require special management to provide for, conservation of the species

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[concerned].” 50 C.F.R. § 424.14(c)(2)(i), yet the USFWS has not taken all of the required administrative steps to ensure the conservation of these species, including their recovery in the wild.

The endangered Slender horned spineflower, the migratory least Bell’s vireo and Southwestern willow flycatcher have not “recovered” or been delisted. Furthermore, U.S. Fish & Wildlife Service has not prepared or implemented a “Recovery Plan” for the least Bell’s vireo or the Southwestern willow-flycatcher as is required. 16 U.S.C. § 1533(f)(1)(A) and § 1533(f)(5). SSC recommends that, prior to the proposed project approval and permitting, the USFWS create a “Recovery Team”, prepare a “Recovery Plan” and assure that the implementation of the Recovery Plan is consistent with all proposed projects that “may effect” listed endangered species. While our recommendation may not facilitate the proposed project “time line”, it will however assure that the ESA is being adequately and legally administered. As you may be aware “policies” do not supersede the Code of Federal Regulations and Congressional Acts.

Were surveys done for plants, amphibians, invertebrates, insects and small mammals on site and indirectly effected areas upstream and downstream? This is important in determining if the proposed “mitigation” is adequate. The proposed “filling” in of the Big Tujunga Wash will cause significant changes to the natural hydrology and sheet flow on and off the project site. The proposed mitigation, of retaining natural habitats on site, at a less than 2:1 ratio is inadequate. USFWS and CDFG have required a maximum mitigation of 5:1 and minimum of 3:1 ratio for in-kind replacement of “very threatened” natural communities. The City and permitting agencies need to be consistent with other project requirements that impacted Riversidean Alluvial Fan Sage Scrub (RAFSS), Alluvial Sage Scrub and Coastal Sage Scrub communities. As an example, Cal Trans was required a 3:1 habitat replacement mitigation for the expansion of State Rt. 30, including the requirement to place a conservation easement on the acquired mitigation lands and to provide long-term funding for the management of the preserve, in San Bernardino by USFWS and CDFG. Why should the City of Los Angeles and permitting agencies require anything less than this? SSC recommends and would be more agreeable to a five to one replacement, if the replacement habitat was in-kind or of higher quality

It appears that the proposed mitigation is experimental and does not take into consideration “cumulative” and “indirect” impacts. All mitigation should be proven. SSC would like all published and unpublished studies and reports that were used to conclude that the proposed “re-creation and enhancement” would be successful for this project. SSC recommends that all mitigation be proven in small plots prior to disruption and “take” of the endangered species and their habitat. It is vitally important to ensure that the proposed displacement of endangered species to nearby/adjacent man-made habitat will conserve the species in perpetuity and not negatively impact their recovery. Any “take” of habitat should not occur during the migration and nesting period

The destruction of endangered species habitat is considered to “harm” the species. (Babbitt v. Sweethome) Spirit of the Sage Council contends that the EIR is not comprehensive and that the determinations are “arbitrary, capricious, and an abuse of discretion or otherwise not in accordance with the law”. 5 U.S.C. § 706(2)(A). “Agency actions” must

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be consistent with Regulations and Congressional intent. Fish & Wildlife Service has failed to follow administrative procedures, regulations, guidelines and their duty to “conserve” fore mentioned listed and unlisted endangered species. The courts have held that “[c]aution can only be exercised if the agency takes a look at all the possible ramifications of the agency action”. **North Slope Borough v. Andrus**, 642 F.2d 589, 608 d.C. Cir. 1980) (quoting North Slope, 486 F.Supp. at 351).

As you may be aware, approximately 6% of natural California riparian communities remain and are threatened daily by water diversion projects, channelization, dams, toxic runoff and resource extractive industries. Water is the life-blood of the Earth and any proposal to change the natural hydrology of riparian arteries ultimately involves death of some kind. It is the arrogance and ignorance of man-kind who think (?) that they can re-create a natural body in a matter of months that took a billion years of evolution. Big Tujunga Wash is a known wildlife movement corridor and is worthy of additional in-depth scientific studies. Mountain lions and Bobcats have been cited within the proposed project area. Please review Marble Mountain Audubon v. Rice in regards to wildlife movement corridors and legal protection.

Wildlife movement will also be impaired within the Big Tujunga Wash corridor and plant propagation will be impacted from the loss of natural flooding occurrences. No mitigation measures have been taken to reduce these impacts to a level of less than significance. A change, reduction in the project size or piece-mealing of the project does not constitute adequate mitigation of negative impacts on the environment. The USFWS and CDFG has previously stated that any disturbance to the endangered slender-horned spineflower would “jeopardize” the survival of the species in regards to a previous golf course design that has now been reduced in order to avoid “direct” impacts to the spineflower. SSC commends the agencies previous analysis of “direct” impacts, however the “indirect” and “cumulative” impacts to the endangered spineflower, and other effected species, will “jeopardize” the long-term survival and recovery of the species.

Restricting the movement/propagation and seed dispersal of the endangered spineflower will certainly preclude recovery of the species occurrences throughout its known distribution in the Big Tujunga Wash. The proposal to “salvage” and “transplant” is not appropriate and experimental at best. Although, CDFG Public Resources Code provides the applicant with the “salvage” alternative, such measures are not scientifically sound or consistent with the purpose and goal of state and federal Endangered Species Act/s.

Spirit of the Sage Council request and encourages the City of Los Angeles to enforce the citizen provision of the Endangered Species Act, and criticizes USFWS for failing to develop and implement (emphasis added) a “Recovery Plan” for the Endangered Slender-horned spineflower (*Dodecahema leptoceras*), least Bell’s vireo, Southwestern willow flycatcher, Little Los Angeles Pocket Mouse and Arroyo Toad as required and pursuant to the Endangered Species Act, 16 U.S.C. § 1533(f)(1) and 1533(f)(1). Any one of the project designs proposed in the EIR could result in losses that would be irreversible and reduce the population size to a point where survival and recovery is

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no longer feasible. Therefore, for all of the above-mentioned reasons it is imperative that remaining habitat and habitat linkages, whatever their condition, be protected to ensure the survival of the species.

Furthermore, the courts have determined that the USFWS and permitting agencies must give “*the benefit of doubt to the species*” in question and by requiring federal agencies to continue to use “*all methods and procedures which are necessary to prevent the loss of any endangered species, regardless of the cost*”. Roosevelt Campobello Int’l Park Com’n v. Environmental Protection Agency,

684 F.2d 1041, 1049 (1st Cir. 1982) (quoting TVA v. Hill, 437 U.S. at 185, 188 n.34) (emphasis added).

SSC contends that FWS has failed to effectively administrate their “duty to conserve” and that their procedures and “agency actions” have permitted incremental “takes” (incidental and direct) to these Endangered Species and cumulatively are “chipping away” of important endangered species habitat restricting the range, distribution and occurrences of listed species. SSC contends that FWS and consultants has not used all “methods” or have dedicated “*all means at their disposal*” to comprehensively define impacts to listed and unlisted Endangered Species and their habitat. (Nat’l Wildlife Federation v. Nat’l Park Service, 669 F. Supp. at 388; see also Defenders of Wildlife v. Andrus, 428 F. Supp. 167, 170 (D.C. 1977)).

**“Entire ecosystems have evidently been irrevocably lost”**  
Raven and Axelrod, 1978-

*“It is not administrative department’s prerogative to disagree with congressional policy and refuse to implement it; an administrative agency is required to effectuate congressional intent whether the agency agrees with Congress or not.”* (Ross v. Community Services, Inc., D.C. Md. 1975, 396 F.Supp. 278, affirmed 544 F.2d 514), and “*Federal Agencies have neither the power nor the competence to pass on constitutionality of administrative or legislative action*”. (Murray v. Vaughn, D.C.R.I., 1969, 300 F.Supp. 688.)

Spirit of the Sage Council finds that “ THE SECOND AND FINAL PART OF THE DRAFT EIR – CORRECTIONS – PG. F-15, #31. BIOTA, ENVIRONMENTAL SETTING, are inaccurate and misleading

The proposal to replace the second paragraph on page 69 is inaccurate and misleading.

The CNDDDB ranking of S1.1 “very threatened” with less than 2,000 acres for Riversidean Alluvial Fan Sage Scrub is the most accurate. The statement from Biodiversity Associates, et.al., 1993, “There are at least eleven known locations of *alluvial scrub* containing over 59,000 acres.”, is an assessment that is three years old and combined all “scrub” types that are found in “alluvial” soil structures. Riversidean Alluvial Sage Scrub refers to a specific vegetation type and community that is associated with alluvial soils distribution (See Attachment – Location of xeric Mediterranean-climate shrub association based on Westman’s 1983 analysis).

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Riversidean Alluvial *Fan Sage Scrub* is a more specific natural community that only exists on the *Fans* of mountain/foothills, usually between canyon washes and in wash floodplains where *alluvial soils* have coalesced. It is the coalescence of the soils through flooding events and earth quakes building upon each event (usually reverse thrust faults) that create the *alluvial fans*. The Riversidean Alluvial Fans along the Coastal facing slopes and canyons of the San Gabriel Mountains have been greatly reduced to less than 2,000 acres through Flood Control activities (Dams, Debris Basins and Channelization), sand & gravel Mining, Residential Development, Golf Courses and Off-Highway Vehicles.

The significance of Riversidean Alluvial Fan Sage Scrub, in comparison with other Coastal Sage Scrub associations, is that this natural community exhibits the species diversity of at least three ecoregions (coastal scrublands, forest and desert). This is a factor that has relatively been ignored by most biologists, including the applicants consultants. The coalescence of mountain/canyon top soils, including seed banks, and their retention on *alluvial fans* over millions of years has created a richness that cannot be recreated by restoration ecologists. There are no documented or published reports to date of successful vegetation or restoration of Riversidean Alluvial Fan Sage Scrub. (See attached copy of a 1996 report by the Society for Ecological Restoration (SER) regarding Coastal Sage Scrub and Riversidean Alluvial Fan Sage Scrub.)

Next to South Africa, California certainly qualifies as one of the world's most biotically diverse areas. The desert, mountain and coastal influences converging with the Transverse Mountain Ranges have created a most unique island of biological diversity. In his studies of Mediterranean Climate Regions, Harold A. Mooney, Stanford University, identified more than 5,046 vascular plant species within California's political boundaries, 30 percent of these species are found nowhere else. In comparison, there are about 20,000 vascular plant species in the continental United States. About one-tenth of California's flora has recently become extinct or endangered. Mooney studies then reveal to us that, this represents 25 percent of all the known extinct and endangered species in the United States as a whole.

*Riversidean Alluvial Fan Sage Scrub is a natural community that is not only State "very threatened" but that is also "Globally Imperiled".*

Substantial scientific biological data that is not included in the EIR/Appendices, presently indicates how imperiled southern California ecosystems are, simply review the California Department of Fish & Game, Natural Diversity Data Base (NDDDB). In southwestern California where development pressures are the greatest, NDDDB identifies 26, S1. "threatened" Natural Communities.

### Element Ranking

*Global Ranking* – The global rank (G-rank) is a reflection of the overall condition of an element throughout its global range.

### *Species Level* -

G1 = Less than 6 viable EOs or *less than 1000 individuals* or less than 2,000 acres.



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G2 = 6 – 20 EOs or *1000-3000 individuals* or **2000-10,000 acres.**

G3 = 21 – 100 EOs or *3000 – 10,000 individuals* or **10,000 – 50,000 acres.**

*State Ranking* – The state rank is assigned much the same way as the global rank, except state ranks in California often also contain a threat number attached to the **S-rank.**

S1 = Less than 6 EOs or *less than 1000 individuals* or **less than 2000 acres.**

S1.1 = *very threatened*      S1.2 = *threatened*      S1.3 = *no current threat known*

Natural Diversity Data Base Rare Communities R-5 Feb. 1992

### Top Priority Rare Natural Communities (Region 5)

<u>Code Number</u>	<u>Location</u>	<u>Name</u>
<i>S1.1 Rank</i>		
21330	Cismontane	Southern Dune Scrub
31200	Cismontane	Southern Coastal Bluff Scrub
32400	Cismontane	Maritime Succulent Scrub
32720	<u>Cismontane</u>	<u>Riversidean Alluvial Fan Sage Scrub</u>

*Once found throughout the coastal facing slopes of the San Gabriel Mountain Range, the Natural Diversity Data Base indicates that as of 1992, there is less than 6,000 acres worldwide and less than 2,000 acres remaining in the United States, where as recently as 50 years ago there were 150,000 to 200,000 acres. Within one generation, Riversidean Alluvial Fan Sage Scrub Natural Communities have become endangered. (Paragraph emphasis added by SSC)*

37C30	Cismontane	Southern Maritime Chaparral
42110	Cismontane	Valley Needlegrass Grassland
47000	Cismontane	Pebble Plains
511??	<i>Cismontane</i>	<i>Southern Sedge Bog</i>
52310	<i>Cismontane</i>	<i>Cismontane Alkali Marsh</i>

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Code Number	Location	Name
<b>S1.1 Rank</b>		
81600	Cismontane	So. Calif. Walnut Forest
81820	Cismontane	Mainland Cherry Forest
83122	Cismontane	Southern Bishop Pine Forest
83140	Cismontane	Torrey Pine Forest
61700	Desert	Mojave Riparian Forest
43000	Desert	Great Basin Grassland
43???	Desert	Mojave Desert Grassland
61810	Desert	Sonoran Cottonwood Willow Riparian
61820	Desert	Mesquite Bosque
75100	Desert	Elephant Tree Woodland
75200	Desert	Crucifixion Thorn Woodland
75300	Desert	Allthorn Woodland
75400	Desert	Arizonan Woodland
85330	Desert	Desert Mnt. White Fir Forest
<b>S1.2 Rank</b>		
21230	Cismontane	Southern Foredunes
44310	Cismontane	So. Interior Basalt Fl. Vernal Pool
35410	Desert	Mono Pumice Flat

**S2.1 Rank includes;**

Venturan Coastal Sage Scrub, Diegian Coastal Sage Scrub, Riversidean Upland Coastal Sage Scrub, Riversidean Desert Sage Scrub, Sagebrush Steppe, Desert Sink Scrub, Mafic Southern Mixed Chaparral, San Diego Mesa Hardpan Vernal Pool, Alkali Meadow, Southern Coastal Salt Marsh, Coastal Brackish Marsh, Transmontane Alkali Marsh.

RE: THE SECOND AND FINAL PART OF THE DRAFT EIR CORRECTIONS – PG. F-16, #38. BIOTA, ENVIRONMENTAL SETTING,

The proposal to include additional informative paragraphs on page 77 is somewhat convoluted and confusing to the reader as it is taken out context.

Although accurate when in context with a specific issue 1) spineflower population, 2) alluvial sage scrub associations and their distribution by Krantz (date not identified),

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3) Riversidean Alluvial Fan Sage Scrub distribution 4) cumulative threats to spine-flowers, 5) cumulative threats to Alluvial Sage Scrub associated communities, and, 6) cumulative threats to Riversidean Alluvial Fan Sage Scrub (RAFSS) communities.

The EIR fails to identify the individual specific circumstances and threats. Although the threats may be the same, the effects on the particular species and impacts to the natural communities differ. Never the less, there are no net benefits or recovery being provided by the proposed project or any other. The species and natural communities that are being referenced continue to become more threatened and endangered.

The EIR fails to disclose significant information regarding additional losses of Riversidean Alluvial Fan Sage Scrub and Alluvial Sage Scrub.

- 1) Removal of occurrence at Cucamonga Canyon Wash, San Bernardino County by Cucamonga County Water District for the construction of two debris basins and water conveyance system in the mouth of the canyon. Destroying natural hydrology and sheet flow to the natural community downstream.
- 2) Removal of occurrence in the City of Fontana/San Bernardino County for phased development of “Hunter’s Ridge”.
- 3) Removal of occurrence by State Rt. 30 expansion, San Bernardino County.
- 4) Approval of the San Sevine Flood Control Project and levees, San Bernardino County.
- 5) Approval of development (Paradise Hills) at Badger Canyon, San Bernardino County.

RE: THE SECOND AND FINAL PART OF THE DRAFT EIR CORRECTIONS – PG. F-19, #47. BIOTA, MITIGATION MEASURES, page 95

All surveys and studies are required to be performed prior to the adoption and certification of and EIR, pursuant to CEQA guidelines. The proposal to conduct a “Preconstruction Survey for the Los Angeles Little Pocket Mouse” is insufficient and circumvents regulatory requirements. Surveys need to be conducted prior to the approval of a project and project design to ensure the “avoidance, minimization and mitigation” of impacts to the species habitat and conservation of the species. The EIR proposes to reverse the administrative procedures of CEQA, NEPA and the ESA, in violation of those regulations and the Administrative Procedures Act (APA). The EIR fails to disclose significant biological information regarding the Los Angeles Little Pocket Mouse. The EIR fails to disclose project impacts on the potential habitat of the Los Angeles Little Pocket Mouse and effects to the species. The EIR fails to provide adequate mitigation for project effects on the Little Pacific Pocket Mouse, based on the best scientific information.

SSC recommends that the City require the project applicant perform all biological surveys for sensitive species by USFWS protocol prior, throughout the effected area upstream, downstream and adjacent to the project site, prior to the adoption and certification of the project EIR. Furthermore the City should require a redesign of the project to avoid impacts to species/habitats, ensuring the conservation of the species,

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including measures to ensure that recovery of listed species will not be precluded by the project and design.

RE: THE SECOND AND FINAL PART OF THE DRAFT EIR CORRECTIONS – PG. F-19, #49. BIOTA, MITIGATION MEASURES, page 95

The EIR is inconsistent and in conflict with statements in regards to the total cumulative impacts of the project. Either the development of Big Tujunga Road is part of the project or it is not. The ambiguity of the expected long-term impacts of the project and road circulation is misleading and confusing to the reader of the EIR. The EIR fails to clearly identify all current, present and future impacts associated with the project. The EIR fails to include surveys, studies and needed information to access the full range of impacts of the project and associated road building known and expected to occur within and adjacent to the project site. The EIR fails to adequately mitigate the full range of impacts of the project and associated road building known and expected to occur within and adjacent to the project site.

USFWS and CDFG need to determine whether the proposed associated Big Tujunga Road may “taken” listed endangered species, the project applicant, Kajima Engineering and Construction, Inc., will further mitigate at a 5:1 ratio for the effects of “take” on listed species – ensuring that such “taking” will not preclude the “recovery” of the Slender horned spinyfinch and other endangered wildlife. A conservation easement held by the state or federal wildlife agencies. Furthermore, construction of this road is expected to have a negative impact on Pre-historic, Historic and Cultural Resources that have failed to be identified or mitigated for in the project EIR and Appendices.

The EIR does not mitigate for the related impacts of road construction, including fragmentation of habitat, wildlife movement and road kill and the edge effects of the project/s and roads. Furthermore, the project EIR does not mitigate for indirect effects on listed migratory songbirds from gold course grasses/non-native parasitism of European starlings and brown headed cowbirds.

It is our intent to find resolve of the following concerns and issues in a timely manner that will eliminate any and all possibilities of “harming” endangered species, the public and “California Indians”. The endangerment and extinction of native flora and fauna, biological and hydrological resources is an indication of a depleted and unhealthy environment for all species, including the human species. The native and natural biological resources are of cultural significance and value to California Indians and California’s Natural Heritage.

The rapid destruction and sprawling urban blight of wild Southern California has not only had a detrimental effect on wildlife and the natural environment, but on the people of California. First the indigenous people, then all of us now living, including the remaining Shoshone who survived the genocide, but will effect more than anyone else our children. We, Americans, can not afford to leave a legacy of golf courses, trash dumps, pink stucco houses on every ridge line and in every canyon, to our future generations. Less than 200 years ago the Los Angeles Basin and Big Tujunga Wash had grizzly bears that could eat the fish from mountain streams and throughout the natural

# Spirit of the Sage Council

30 North Raymond Avenue, Suite 302  
Pasadena, California 91103

SACRED BIODIVERSITY

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course of the Los Angeles River to the Pacific Ocean. Compromise after compromise to the developers of Los Angeles and corporations without accountability have taken our Natural Heritage for private profit. Piece by piece our California “Golden State” has been bulldozed and lost forever.

Southern California is at the epicenter of species extinction and needs to be turned around. The City of Los Angeles and the Planning Commission has the opportunity to make the changes that are necessary. We may not ever be able to bring back the California grizzly or salmon runs to Los Angeles, but the City can take the measures needed to preserve and recover endangered Riversidean Alluvial Sage Scrub, the endangered Slender-horned spine flower, cactus wren, least Bell’s vireo, coast horned lizard and other species that are threatened by the development in Big Tujunga Wash. The City of Los Angeles can learn to honor and respect the cultural/spiritual needs of the Shoshone-Gabrielino Nation and people who require natural and wild open spaces to sustain their health and general welfare.

In closing, Spirit of the Sage Council encourages the City and Planning Commission to reject and oppose the proposed golf course project and any other development proposals for the Big Tujunga Wash. Please include this letter in the Administrative Record and respond accordingly.

Sincerely,

Leeona Klippstein, Co-founder  
Spirit of the Sage Council

Chief Ya’Anna, Vera Rocha  
Shoshone Gabrielino Nation

cc: Mayor Richard Riordan  
City of Los Angeles  
200 N. Spring Street  
Los Angeles, CA. 90012

Gail Kobetich, USFWS  
John Hanlon, USFWS  
Scott Eliason, USFWS

Senator Tom Hayden  
Senate Natural Resources Committee  
State Capitol  
Sacramento, CA. 95814

Susan Cochrane, CDFG Sacramento  
Patty Wolf, CDFG Region  
Glenn Black, CDFG Natural Heritage  
Mary Meyer, CDFG Natural Heritage

Senator Barbara Boxer  
2250 E. Imperial Highway #545  
El Segundo, CA. 90245